IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

CWP No. 624 of 2007

Date of Decision: 2.7.2007

Shanti Devi & ors. …Petitioners.

Versus.

State of HP & Ors. ..Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Acting Chief Justice.
The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?

For the Petitioner: Mr. Sanjiv Bhushan, Advocate.

For the Respondents: Mr. M.S.Chandel, Advocate General with
Mr. R.M.Bisht, Deputy Advocate General,
for respondents 1 to 3.

Mr. K.D.Sood, Advocate, for respondent No.4.

Deepak Gupta, ACJ (Oral):

The petitioners by means of this writ petition has claimed the following relief amongst others:-

> " (a). That respondents No.1 to 3 may kindly be directed not to take the land of the petitioners except in accordance with law and the provisions of Land Acquisition Act with further directions to respondent No.4 not to interfere with the land of the petitioners unlawfully and illegally."

The case of the petitioners in short is that respondent No.4 entered into an agreement to purchase certain land of the petitioners. According to the petitioners, since respondent No.4 failed to seek and obtain permission from the Government to purchase this land, the agreements came to an end and the petitioners were entitled to forfeit the advance amount paid to them.

It is an admitted fact that respondent No.4 filed a Civil Suit for specific performance of the aforesaid agreements but the suit was withdrawn without the respondent No.4 seeking permission to file fresh proceedings. Thereafter the State Government at the instance of respondent No.4 started acquisition proceedings for a portion of the said land. This land has been acquired and the order of acquisition was passed as far back as on 31.3.2003. Admittedly, the petitioners had filed reference petition claiming enhancement of compensation. According to the petitioners, respondent No.4 while depositing the awarded amount in terms of the award, has wrongly deducted the amount paid in advance in terms of the agreements.

Shri Sanjiv Bhushan learned counsel for the petitioners has strenuously contended that the agreements have come to an end and the amount paid under the said agreements could not be taken into account while assessing the compensation or while depositing the amount.

It would be pertinent to mention that the petitioners along with the petition did not file a copy of the award announced by

the Land Acquisition Collector. Respondent No.4 had filed a detailed reply and has placed on record the copy of the award of the Collector dated 31.3.2003 in which the Land Acquisition Collector has clearly held as follows:-

> "**Advance Compensation**:
>
> In view of documentary evidence submitted by the company regarding advance taken by any landowners against his land and also everything fastened to his land the same shall be deducted from his compensation amount considered in the award statement."

Further in the award statement filed along with award, the Collector had ordered that an amount of Rs.90,885/- has to be deducted from the amount payable to petitioner No.1 and a sum of Rs.45,442/- from the amounts payable to each of the petitioners 2 to 5.

These facts were not given in the writ petition. We are of the view that the petitioners purposely withheld these facts and managed to obtain the stay order by suppressing these facts whether the Land Acquisition Collector has rightly or wrongly ordered deduction of this amount.

We are not going into the merits of the contention whether this amount could be deducted or not. However, once this amount has been ordered to be deducted, it was the duty of the petitioners to have brought this fact to our notice. Further the petitioners have already filed a reference petition. We are of the

considered view that in the reference petition, the petitioners can agitate this question whether the Land Acquisition Collector could have ordered deduction of the amount paid as advance in pursuance of the earlier agreements or not? This question cannot be raised in the writ petition when the reference proceedings are pending.

In view of the aforesaid discussion, the writ petition is dismissed with costs assessed at Rs. 3000/-. However, it is clarified that the petitioners are at liberty to raise all such questions before the reference Court.

(Deepak Gupta), ACJ.

July 2, 2007. (V.K. Ahuja), J.

s.